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Defendant in Pro Per

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA
Plaintiff v.
ROBERT JACOBSEN
Defendant

Case No. CR 15-518 MMC
MOTION TO REVERSE PLEA AGREEMENT
AND SET ASIDE INDICTMENT
DUE TO INEFFECTIVE ASSISTANCE OF
COUNSEL

Date: Time:

INTRODUCTION

This motion is a request of the Court to reverse the plea agreement agreed to by this Defendant on July 19, 2017 as well as to reverse the indictment from the Grand Jury based on intentional false testimony of material facts. The reversal of the plea agreement is based on multiple examples of ineffective assistance of counsel.

BACKGROUND

For a number of years I had been helping people to fight to keep their homes during the economic downturn that led to so many foreclosures. Much of this involved lawsuits against lenders. January 19, 2012 I met attorney Michael Yesk (Yesk) who specialized in litigation

1 against lenders for wrongful foreclosure. March of 2012 Yesk told me about a lender that
2 shows as “lender” on deeds of trust called “American Brokers Conduit, a New York
3 corporation”, (ABC). Looking into ABC Yesk had discovered that there has never been a
4 corporation called ABC which would lead to the conclusion that there was no valid lender on a
5 note or deed of trust showing that name as lender. Attached here as **Exhibit 1** is a statement
6 from the New York Department of State confirming that there has never been a corporation
7 registered in the name of ABC. Since all parties to a contract must be identifiable per
8 California law CCC1558 as well as tax law and corporate law, all telling us the deed of trust
9 (and note) would be void *ab initio*, not voidable. I started looking for homes with deeds of trust
10 showing ABC that was in foreclosure. Maybe we could help the homeowner. While I was
11 looking for an hoe with an ABC loan another lender was discovered “Direct Funding, a
12 California corporation” that also had never existed in the California Secretary of State’s
13 database. This was found on a deed of trust on a home owned by Virgin Properties, LLC
14 (Virgin), a Victor Gess (Gess) company, located at 1040 Pine Lane, Lafayette, CA. Yesk filed
15 a lawsuit to confirm that the deed of trust was void. The Court agreed and ruled the deed of
16 trust void *ab initio* which established that Yesk’s legal theory about the deed of trust being void
17 was good legal theory. See **Exhibit 2** for copy of judgment (only showing page one of deed of
18 trust).

Another suit was filed against ABC on a house located in Concord, CA on 3928
Bayview Cir, Concord, CA. (Mathesen and Virgin Properties v ABC. See **Exhibit 3** for copy
of complaint. Virgin Properties, LLC, using Yesk, filed this suit also. Gess was advised by
Yesk to form a new New York corporation called American Brokers Conduit to keep anyone
else from forming a corporation by that name then coming forward to claim they were the

1 lender on the deed of trust (called corporate blocking). Please take notice of Exhibit B in this
2 complaint showing the New York Department of State statement saying there was no
3 corporation ever registered by the name of ABC.

4 Gess formed a new entity in NY called American Brokers Conduit Corporation
5 (ABCC). A slightly different name, but close enough to keep anyone from reserving a new
6 corporation in that name. Gess and I realized the name of ABCC would also be perfect for a
7 web based search site to assist mortgage brokers find matching lenders for difficult loans to
8 place. It was out plan to develop this website together along with Patric Todd in New York.

9 This Mathesen / ABC suit was lost because the servicer/lender went ahead to
10 foreclosure. The right for a lender to foreclose is found in the deed of trust. Yesk argued that
11 the lender/servicer did not have standing to foreclose because the deed of trust was void. Yesk
12 discovered that standing is not a valid argument when it is against the defendant. The case was
13 lost. Yesk felt it was a bad decision but respected the Court's decision.

14 Another house was found by me at 225 Verde Mesa Dr, Danville. The house was about
15 to go to foreclosure sale and the owner (Bill Williams) did not want to keep his house. He
16 didn't want to get involved in a lawsuit or pay for litigation. He was offered that he could sell
17 the house subject to the valid existing debt (the ABC loan), the new owner would file a suit to
18 void the deed of trust then pay Bill Williams, \$55,000 assuming the suit was successful and
someone bought the house.

Clarice Batiste of CB Equities was interested in buying the house, suing ABC then
reselling the house to make a nice profit and pay the prior owner his \$55,000. She hired
attorney Nikhil Bhatnagar (Bhatnagar) who was a contract attorney under Yesk. Bhatnagar,
being aware of the unsuccessful suit against ABC decided to file the suit against ABC but serve

1 the only New York corporation with that name, ABCC. Gess got the suit served on ABCC and
2 asked me to assist in making it go away as quickly as possible. Yesk paralegal Rod Ciferri
3 (Ciferri) drafted a stipulation per Bhatnagar's instructions. The stipulation stated that ABCC
4 had never loaned any money on the Verde Mesa house and didn't object to a removal of the
5 deed of trust from the property. See **Exhibit 4** showing stipulation. A truthful statement by
6 ABCC saying they had never loaned money on this deed of trust. ABCC hired an attorney that
7 had ben considered to work at Yesk Law but wasn't hired, Alla Barbalat. The stipulation was
8 filed which led to a stipulated judgment voiding the deed of trust. The judgment voiding the
9 deed of trust was immediately sent to the foreclosure trustee doing the foreclosure on the Verde
10 Mesa house. The foreclosure trustee would then cancel the foreclosure and as an agent for the
11 lender, would forward the judgment to whoever that was. Sometimes the entity that owns a
12 note and deed of trust is very challenging to identify. This procedure was to flush out the entity
13 that claimed to own the void deed of trust. It was expected that entity that claimed to own the
14 void note and deed of trust would file a new suit to reverse the stipulated judgment. That
15 would make the note owner the plaintiff. Now, according to Bhatnagar, he could object due to
16 lack of standing. That was the plan. The attorneys referred to this as a "work around".

13 After about a year nothing was heard from whoever would be claiming to own the deed
14 of trust. It was concluded by all of the Yesk and Bhatnagar that they figured out the deed of
15 trust was void because of the lack of it stating a valid lender, then concluding there was no
16 hope of reversing the judgment.

16 Two other houses were located with all the same story and almost carbon copy lawsuit.
17 The owners didn't want to sue the lender, didn't have money, but would be interested in getting
18 a fee to allow someone else to sue, get a judgment voiding the deed of trust, followed by the

1 sale of the house now that the void deed of trust was removed. The next one was in Monterey
2 on 11718 Saddle Rd followed by 1611 Broadrick St, San Francisco. Bhatnagar copied the old
3 complaints and stipulations which led to a stipulated judgment, just the same. The Monterey
4 house was purchased from the owner in foreclosure (Eckersley) by EquitecWest, LLC. The
5 San Francisco house was purchased by Michael O'Brien's company called Bay Ridge
6 Properties. The Monterey house was never re-sold but Bank of New York Mellon did file a
7 new suit to reverse the stipulated judgment. For the San Francisco house, Wells Fargo filed a
8 motion to intervene. Bhatnagar never objected or replied in any way leading to them
9 intervening. Finally Deutsch Bank came around and filed their suit to reverse the stipulated
10 judgment on the Danville house. These suits, to the best of my knowledge, remain unresolved
11 as this writing.

12 They should all lose because ABC is an unidentifiable entity meaning the deed of trust
13 is void *ab initio* which means the entity that says they own the deed of trust in fact owns a void
14 deed of trust. The stipulated judgments only voided the deed of trust, not the note, so I suppose
15 they could try to collect on the note, but, they won't be successful because the note also is void
16 for the same reasons. I was told by the attorneys that their only recourse is to demand their
17 money back from the purchase of the void note and deed of trust. It's sort of a puzzle who they
18 might have paid to buy this worthless asset. It couldn't have been ABC because as a non-entity
they could not have opened a bank account. I'm sure there will be more to this story with time.

The bottom line is the deed of trust is void, was always void and has no force and effect
to act as a security instrument for a note somewhere. The owner of the house never borrowed
any money from anyone on the house, but the house came with a deed of trust that is invalid
(void) and should be removed, as it is a cloud on the title. (per the attorneys).

1 I referred the two house deals to Clarice Batiste and Michael O'Brien with the
2 understanding I would lead them through the process to teach them how to do these suits to
3 make money. For this they would pay me a sizable referral fee. After their first house they
4 could do others with no referral fee. This is the money that is claimed I did money laundering
5 and wire fraud for the money being transferred through the wires. **Exhibit 5** shows the San
6 Francisco house lawsuit. **Exhibit 6** shows the stipulation. **Exhibit 7** shows the judgment.

6 Critical to these transactions and lawsuits was the fact that ABC had never existed
7 making the deed of trust recorded on property void.

7 GRAND JURY

8 November 5, 2015 the Grand Jury convened to determine if an indictment was
9 justified for money laundering and wire fraud relating to the Danville and San Francisco
10 lawsuits discussed above. The FBI and IRS had been conducting their research into this
11 potential criminal case for approaching two years. They had researched every corporate
12 entity related to the three lawsuits as well as companies owned by myself. For the
13 companies that were the plaintiffs in the three lawsuits, they contacted and talked to the
14 owners related to the Danville and San Francisco houses. The FBI and IRS researched
15 ABCC and had contacted Victor Gess, the owner. Just as a note, to look up ABCC (American
16 Brokers Conduit Corporation) in New Yorks records in order to find Victor Gess' name, the
17 FBI and IRS would have, by the same action, seen there was no corporation by the name of
18 ABC, the first three words being identical. They both would have come up in the same
search, but of course only ABCC was a valid, registered corporation, so it was the only one
that came up. They had contacted all the attorneys related to the lawsuits that are subject

1 of this case. In talking to attorney Michael Yesk of Yesk Law, David Strange and Julie Ryer
2 were in Mr. Yesk's office and were told about the fact that ABC had never existed making
3 any contract bearing that name a void document. Michael Yesk told Strange and Ryer
4 about of the first lawsuit done by Yesk (Matheson and Virgin Properties v ABC Concord
5 house) which has a copy of the New York Department of State statement that ABC had
6 never existed in their records shown as Exhibit B, the same as Exhibit 1 and Exhibit B in
Exhibit 3 in this motion. Yesk may have given them a copy also.

7 Strange talked to Stephen Siproth, Deputy County Counsel for Contra Costa County.
8 In the 302 narrative (evidence page FBI-000165), Strange writes in the second paragraph,
9 last sentence "The actual defendant named was listed as "ABC", a New York Corporation,
10 but Siproth could not find any supporting documentation to show that this corporation
11 actually existed." Then Strange writes on page FBI-000166, top of the page of same
12 document "Siproth said that American Brokers Conduit Corporation could not be the same
as American Brokers Conduit as American Brokers Conduit was not a corporation." See
Exhibit 8 for a copy of the Siproth FBI 302

13 The above two paragraphs should leave no doubt that Strange knew there was no
14 New York corporation called American Brokers Conduit. When Siproth told Strange there
15 was no corporation called ABC then the first thing he would have done when he got back to
the office would be to look it up himself if he hadn't already.

16 All of this happened before the Grand Jury hearing. Strange and Ryer absolutely
17 knew ABC had never existed as a New York corporation. It is not possible that they could
18 not have known this. After the conversations with Yesk, they also knew the theory and law

1 behind all contracts, including deeds of trusts and notes, bearing ABC as a party, would be
2 void.

3 **ABC bankruptcy:** At the time of the first ABC lawsuit, attorney Michael Yesk was
4 told by someone that there had been an ABC as a dba of American Home Mortgage Corp.
5 (AHMC) and that AHMC had filed bankruptcy. Michael Yesk went to PACER and looked up
6 the AHMC bankruptcy, then did a word search for "Conduit" and found nothing. Checking
7 schedules for assets held by AHMC also found nothing for ABC. See **Exhibit 10**. A check of
8 Suffolk County records, where the ABC entity was supposedly located, found no dba either.
9 **Exhibit 11**. A check of the New York Department of State for corporate registration for
10 AMHC showed various other names that were subsidiaries or dba's, but ABC was not there.

11 **Exhibit 12** is a statement from the Suffolk County telling us there is no record of
12 American Brokers Conduit as a dba in their county.

13 A visual inspection by me of the address where ABC was supposedly located found
14 that they were not there and no one recognized the name. The conclusion was that it was
15 bad information. ABC had never filed bankruptcy and never was associated with American
16 Home Mortgage Corp. This research was done in 2012, about 5 years after AHMC filed
17 bankruptcy. If ABC was supposed to be there you would think after 5 years it would
18 somehow end up in the AHMC bankruptcy records. The conclusion of Yesk and Bhatnagar
is that ABC never filed bankruptcy as an asset of AHMC or on its own.

On November 5, 2015 the Prosecutor and his witnesses met for the Grand Jury
hearing to convince the Grand Jurors that Robert Jacobsen should be indicted for money
laundering and for wiring money gained by fraud, or, money laundering. During the Grand

Jury hearing, Prosecutor Benjamin Kingsley brought in witnesses of David Strange for the FBI and Julie Ryer for the IRS. What follows are excerpts from the Grand Jury transcript with comments. Both Strange and Ryer committed perjury to the Grand Jury in order to assist Prosecutor Benjamin Kingsley to get his indictment on me buy claiming ABC was a valid New York corporation and had filed bankruptcy in 2007 or 2008, along with other falsities. There are a total of 15 lies that are significant. Without these false statements, under oath, there would never be an indictment making them material facts.

GRAND JURY EXCERPTS AND COMMENTS

Testimony of David Strange, Special Agent, FBI questioned by Benjamin Kingsley

GJ-0005 line 4

Q. Now , was there a legitimate mortgage issuer known as "American Brokers Conduit "?

A . Yes . There was.

If American Brokers Conduit has never been a legitimate entity who could not have opened a bank account and could not be part of a contract, how can it be a legitimate mortgage issuer. It can't. This is a lie to the Grand Jury. Lie #1

GJ-00005 line 7

Q . And did someone, as perhaps part of the scheme you're investigating, create something called " American Brokers Conduit Corporation "?

A . Yes .

Q . And are those two things different entities?

13 A . They are different entities.

14 Q . The difference being that one of them has
15 "Corporation" at the end of its legal name and the
16 other one doesn't?

17 A. Yes .

Mr. Strange fails to mention that the difference between American Brokers Conduit Corporation (ABCC) and American Brokers Conduit, a non-entity (ABC), is that ABCC is a legal New York corporation and the other ABC is a non-existent entity. This was intentionally misleading to the Grand Jurors. He should have said ABCC is a valid corporation and ABC is an unknown entity with no record of it being a New York corporation or any other kind of legal entity. Lie #2

GJ-00005 line

22 Q . All right . So as part of the scheme have
23 you identified at least two instances where someone
24 bought homes for which a mortgage had originally
25 been issued by American Brokers Conduit?

GJ-00006

1 A . Yes .

2 Q. And that's the legitimate mortgage issuer.

3 A . Yes .

ABC is not a legitimate mortgage issuer. It's not even a legitimate company. It could not even have a bank account (ie. funded a loan) or be part of a contract. Lie #3

21 Q . Did he refinance his home in 2007 with a
22 loan from American Brokers Conduit?

1 23 A. Yes . he did .

2 To characterize a lender as ABC, a company that couldn't even open a bank account, is
3 an outright misrepresentation. Lie #4

4
GJ-00010

5 20 Q. And can you just review generally what
6 21 happened in this case.

7 22 A. In this particular lawsuit CB Equities
8 23 sued American Brokers Conduit Corporation stating
9 24 that the deed of trust on the loan was fraudulent
10 25 and that they wanted it expunged or annulled.

GJ-00011

1 Q. And what happened?

2 A. The two parties reached an agreement and
3 they presented that agreement to a Federal Judge
4 here in San Francisco, and the agreement was that
5 the loan was indeed invalid and -- and they wanted
6 it expunged and the Judge agreed and signed away
7 the loan.

8 There is nothing in the stipulation that says ABCC agrees that the loan was indeed
9 invalid or wanting it expunged. Here are the exact words ABCC agreed to:

10 WHEREAS, AMERICAN BROKERS CONDUIT CORPORATION never loaned money with
11 respect to the deed of trust;
12 WHEREAS, AMERICAN BROKERS CONDUIT CORPORATION has no objection to this Court's
13 Judgment expunging, cancelling and nullifying the deed of trust upon the terms hereinafter set
14 forth;

15 This is another misrepresentation of the facts to the Grand Jury. Lie #4
16
17
18

1
2 GJ-00011

13 Q. -- along those lines? So according to the
14 court records that you reviewed, what was the name
15 of the attorney who represented American Brokers
16 Conduit Corporation in this lawsuit?

17 A. In this particular case the attorney
18 representing American Brokers Conduit Corporation
19 was named " Alla ," A-1-1-a, "Barbalat,"
20 B-a-r-b-a-1-a-t.

21 Q. And that's the company that in theory,
22 according to this lawsuit, owned the mortgage on
23 the home.

24 A. Correct.

ABCC never said they owned the loan, in fact they said the opposite, that they never
loaned money with respect to the deed of trust. This is an outright misrepresentation. lie #5.

12
13 GJ-00013

14 7 Q. Okay . Have you - - as part of your
15 8 investigation have you discovered what happened to
16 9 the **actual company** referred to as " American Brokers
17 10 Conduit "?

18 11 A. Yes. I have .

12 Q. What happened to it?

13 A. American Brokers Conduit went bankrupt
14 around 2007, 2008.

1 There has never been an "actual company" called ABC and there is no record of ABC filing
2 bankruptcy in PACER per research by Yesk in December of 2012. This is lie #6 trying to
3 make ABC appear to be a real company that can file bankruptcy.

4 _____
GJ-00019

5 The questioning in this section has to do with the ABC loan and deed of trust on the
6 Danville house, voided by the Court.

7 14 Q. As far as you're aware, is that 2007 loan
15 issued to Bill Williams still outstanding on 223
8 16 Verde Mesa?

9 17 A. It is still outstanding on that
18 property.

10 Mr. Strange is giving his legal opinion here. If the deed of trust recorded against the
11 Verde Mesa house is void because there is no valid lender named, then it is not still
12 outstanding. The court case to reverse the judgment by Deutsche Bank is still undecided as
13 of the date of this writing. Mr. Strange is just making up facts as he feels helps his case. Lie
#7.

14 _____
GJ-00020

15 10 Has your investigation suggested that Robert
16 11 Jacobsen and perhaps others have purchased homes in
12 this manner or orchestrated the purchase of homes,
17 13 created these fraudulent lawsuits like the one that
18 14 you just testified about to make it look like a

1 15 loan had been expunged, and then resold the homes
2 16 later on?

3 17 A. Yes.

4 Robert Jacobsen has never purchased a home, filed a fraudulent lawsuit to make it
5 look like a loan had been expunged, and then resold the homes later on. This is a
6 misrepresentation to the jury. Lie #8.

7 **GRAND JURY TESTIMONY OF IRS SPECIAL AGENT JULIE RYER BY BENJMIN KINGSLEY**

8 GJ-00288

9 13 Q. Did ABC and its related entities go bankrupt
10 14 in 2007?

11 15 A. Yes .

12 ABC has never gone bankrupt. Lie #9

13 GJ-00311

14 16 Q. Both ABC and ABC Corp . were incorporated in
15 17 New York, correct?

16 18 A. Correct.

17 What she should have said is ABC Corp (ABCC) was incorporated in New York but
18 ABC was never a valid New York corporation. Lie #10

19 GJ-00312

20 4 GRAND JUROR: Isn't there an incorporation
21 5 number that goes with corporations somewhere?

22 6 THE WITNESS: I don't believe it was on the

7 documents that were filed in court.

8 GRAND JUROR: Oh. And no one in the court
9 checked?

10 MR . KINGSLEY: I think that we're asking at
11 this point for speculation.

12 GRAND JUROR: Let's let it progress a little
13 bit.

Here the juror's question is right on point. Is ABC a real corporation or not? When asked this question Julie Ryer says she didn't see any numbers on any documents she checked. It would have been interesting to ask what documents she was talking about. Then the juror is shocked that essentially nobody checked to see if it is a valid corporation. Of course they did check and knew ABC was not a valid corporation. Mr. Kingsley realizing the juror was getting to close to the actual truth says "I think we're asking at this point for speculation". There is nothing speculative about the juror's question. Mr. Kingsley knows there is no ABC corporation and wants to quickly move on before the truth is forced out of Julie Ryer, who knows the truth. Major lie #11

GJ-00314

25 Q. As far as you're aware, is the 2007 loan

GJ-00315

1 from ABC issued to Bill Williams still outstanding
2 on 223 Verde Mesa?

3 A. Yes.

1 The ABC Deed of Trust is fake or void, therefore is not outstanding on 223 Verde Mesa.
2 Also, she is making a legal conclusion. This is a false statement made to the jury.

3 Lie #12

4 _____
5 GJ-00316

6 18 Q. Oh, you ' re talking about
7 19 down the -- so at the end of the transaction, are
8 20 you aware whether Robert Jacobsen paid Bill Williams
9 21 any money?

10 22 A. He did what he promised.

11 23 GRAND JUROR: Okay. Thank you.

12 24 GRAND JUROR: How much did he pay him?

13 25 THE WITNESS: About 55,000 .

14 Robert Jacobsen never paid Bill Williams any money. The Government has Robert
15 Jacobsen's bank records and probably those of Bill Williams, that would show that Jacobsen
16 never paid Williams any money, so, why would Julie Ryer lie about this? Attached as
17 **Exhibit 9** shows the cancelled check from CB Equities owned by Clarice Batiste, that
18 purchased the house from Bill Williams. Lie #13

19 _____
20 GJ-00317

21 14 Q. Well, let me ask -- so this -- so ABC

1 15 originated the mortgage in this case in 2007,

2 16 right?

17 A. Correct.

3 18 Q. Then it went bankrupt shortly afterwards?

4 19 A. Yes.

5 There is no record of ABC going bankrupt. Since ABC is not a valid New York corporation, it
6 could not have opened a bank account, therefore it could not have loaned any money.
Lie#14 and 15

7 **CONCLUSION FROM GRAND JURY TESTIMONY**

8 The Government (Prosecutor) knowingly presented false “facts” to the Grand Jury
9 through his cooperating Government witnesses, to try to get an indictment against myself. If
10 Julie Ryer from the IRS and David Strange from the FBI had been truthful and said ABC had
11 never existed as a New York corporation making the deed of trust void from its inception
12 because of not having an identifiable party shown as lender, the Grand Jury would have come up
13 with a different conclusion. There is some criticism that the procedure used by attorney
14 Bhatnagar to get the stipulated judgment (his “work around”) was not proper. If the procedure
15 was improper, he would have improperly voided an already void deed of trust. Therefore no one
was defrauded using Bhatnagar’s questionable legal procedure. Therefore there can be no
money laundering or wire fraud of wiring of fraudulently obtained money. I believed and trusted
the two attorneys handling these cases.

16 When the juror specifically requested to know if American Brokers Conduit was a valid
17 corporation, specifically, has corporate registration numbers in New York, Benjamin Kingsley
18 brushed him off telling him they would get back to that another time (paraphrased). Of course
they never came back to the subject.

1 This was an intentional presentation of false evidence to get an indictment by Benjamin
2 Kingsley, Julie Ryer and David Strange, who must have agreed to this false testimony prior to
3 coming to the Grand Jury, ie conspiracy to defraud the Court. In order to keep from looking like
4 they wasted almost two years preparing for this Grand Jury hearing, then losing, they concluded
5 they must lie about the status of ABC (violations of 18 US Code §1823 Making false
6 declarations before a Grand Jury).

7 I further believe that Mr. Kingsley was not in this by himself. I wasn't invited to the Grand
8 Jury to see for myself, but it is my belief that Acting United States Attorney Brian Stretch and
9 Chief, Criminal Division David R. Callaway were heavily involved with this conspiracy to
10 defraud the Grand Jury. Both their signatures, along with Benjamin Kingsley, are shown at the
11 bottom of the last page of the indictment. Probably all parties named on the case as attorneys to
12 be served. I would like to know if they were all there at the Grand Jury hearing listening to the
13 false testimony and did nothing. There needs to be more research.

14 **INEFFECTIVE ASSISTANCE OF COUNSEL**

15 **1. Attorney should have acted on knowledge of IRS/FBI Perjury:** After my
16 attorney had become more familiar with my case, he understood that the Grand Jury had
17 been heavily influenced by false testimony by IRS and FBI by telling the Grand Jury ABC
18 was a valid New York corporation, when we know that if they had responded that ABC was
a fake/non-existent entity shown on the deeds of trusts that were made void, they would
not have come to the same conclusion to indict. Using a procedure of whatever kind, to
void an already void deed of trust, no mater what the procedure, did not deny any
legitimate lender of a deed of trust. It was already void before the procedure. My attorney

1 knew this and should have filed a motion to set aside the indictment given the
2 circumstances of the perjury in the Grand Jury by the Prosecutor's witnesses Strange and
3 Ryer. This never happened. This would have ended this case about two years ago. This
4 constitutes ineffective assistance of counsel.

5 **2. Untrue Guidance by Legal Counsel Regarding False Testimony.** With
6 knowledge the Prosecutor is capable of fabricating evidence and bringing in witnesses to
7 give false testimony, including the FBI and IRS witnesses, my attorney should have advised
8 me that the false testimony in trial can be counteracted by proving the statements are
9 untrue and discrediting the witness or the Prosecutor's exhibits. I was led to believe the
10 jury is more apt to believe the Prosecutor's witnesses, especially ones from the FBI and IRS
11 that seemingly have no vested interest in the trial outcome, therefore I would not be able to
12 effectively fight that testimony. "You will lose because of the Prosecutor's witnesses",
13 meaning the lying witnesses. I was told it would be best to accept the plea agreement. I
14 now know you can effectively discredit even the Government witnesses' testimony as can
15 be seen in this motion. This constitutes ineffective assistance of counsel. I believe I am
16 innocent and could get past the lying witnesses and fabricated evidence and prove my
17 innocence. I should not have believed my attorney and insisted on going to trial.

18 **3. Lack of Preparation by Attorney:** Whenever I would request to come to my
attorney's office to start going over the mountain of documents the prosecution has
provided, I was told ok, but I was limited to 2 hrs. I asked many times. Otherwise, I could
only look at the raw digital data provided. I wanted to see all the notes, tabs and sorting my
attorney had done. It never was convenient for me to come in and spend some serious time

1 going over the evidence. I never saw the files. We always ended up talking about
2 something else.

3 I felt I could contribute to the explanation of how the various documents, emails and
4 transcripts fit into my understanding I was innocent of wrongdoing. He would sometimes
5 say things that were not factual regarding the details of the case, so I concluded he needed
6 to go over the information with me to learn the true story. This never happened and
7 therefore my attorney would not have been able to properly respond to questions or
8 statements in trial. His reluctance to show me his work preparing the many documents for
9 trial, made me certain he was nowhere near ready to defend me in trial. Maybe he had not
10 organized the files at all? The trial was now upon me. I didn't feel he could provide
adequate defense without the story behind the significant individual documents. Therefore
agreeing to the plea agreement might be worth considering. Ineffective assistance of
counsel.

11
12 **4. Told About Trial at Sentencing Hearing:** At the time when my attorney
and I met in front of the courtroom to talk over the plea agreement, he told me there would
13 still be a "mini trial" at the sentencing hearing, where I could present my case. After the
14 plea agreement hearing I asked him about which witnesses we should bring in where I was
told we couldn't bring in any witnesses and there wasn't really a trial. Just a hearing having
15 to do with sentencing which at times might sound like a trial, but there is no way I could be
16 found not guilty. No trial. I never would have agreed to the plea agreement if I had known
17 the true nature of the "mini-trial" at sentencing. I felt tricked. This constitutes ineffective
assistance of counsel.

1 **4. Lack of understanding of Plea Agreement:** Right before the plea hearing,
2 my attorney and I sat outside the courtroom. He asked me if I had the plea agreement and
3 had any questions. I had glanced it over, had questions, but there was no time. I asked a
4 few things that came to mind. We had to go into court. I did not understand the plea
5 agreement and was very anxious. I couldn't concentrate. It was all happening way to fast
6 for me. When I am under stress, my blood pressure spikes up to around 200/135 that even
7 the 3 medications I take to lower blood pressure can't control, I get a splitting headache
8 and my ability to concentrate is greatly reduced. I don't remember events that transpire,
9 even that happened seconds before. The plea agreement was just a blur including when it
10 was read to me in court. By the time the end is reached I won't know anything of the
11 document that came before.

12 New counsel was appointed so I could motion to reverse the plea agreement. When
13 my new counsel was reading over the plea agreement out loud, I had no recollection of
14 much of it.

15 I needed more time to digest what the significance of the plea agreement was before
16 being rushed into court to agree to it. That day I had no clear understanding of what the
17 plea agreement meant or what the consequences would be. I wasn't told the agreement of
18 the plea agreement didn't have to be agreed to right then. It can be done any time before
the end of the trial. This constitutes ineffective assistance of counsel.

6. Motion to Cancel Indictment. Since I was not made aware of the ability to
set aside the Grand Jury indictment until after I was appointed new counsel which is as it I
understand, a motion to set aside the indictment must happen before the plea agreement.
I have been told I must first reverse the plea agreement then motion to get the indictment

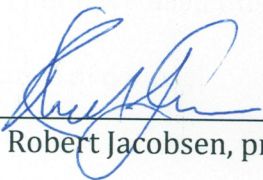
1 cancelled. I was never told about a motion to cancel the indictment by my attorney, Mr.
2 Crudo. I would have wanted to do this. I fear the reason nothing was done is the
3 unwritten law not to harm other attorneys. This constitutes ineffective assistance of
4 counsel.

5 7. **Never told I could negotiate the plea agreement:** I was never told you
6 could negotiate the plea agreement, rather take it as it was or not at all. I have since found
7 out that is not the case. This constitutes ineffective assistance of counsel.

8 8. **Threat if I didn't take plea agreement:** I was told, sign the plea agreement
9 or possibly get up to 20 years when you lose in trial (paraphrased). The likelihood of
10 getting a 20 year sentence is extremely unlikely in a criminal case such as this. My counsel
11 should not have used this very unlikely outcome as a threat. This constitutes ineffective
12 assistance of counsel.

13 REQUEST OF THE COURT

14 I request the Court reverse the plea agreement for the reasons given above followed
15 by the setting aside of the indictment. If the later can't happen, I look forward to a fair trial
16 with truthful witnesses provided by the prosecution. Up to now the behavior of the
17 prosecutor and his witnesses is despicable. I want to have my day in court for a fair trial.

18 
Robert Jacobsen, pro se